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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/589,936

08/18/2006

Richard Dubettier-Gernier

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AIR LIQUIDE

Intellectual Property

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HOUSTON, TX 77056

EXAMINER

MCGUTHRY BANKS, TIMA MICHELE

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

09/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/589,936	Applicant(s) DUBETTIER-GERNIER ET AL.	
	Examiner TIMA M. MCGUTHRY-BANKS	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/18/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Status of Claims

Claims 1-6 are cancelled, and Claims 7-12 are new.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings are difficult to see. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

It is suggested to add a heading of "Brief Description of the Drawings" on page 5.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

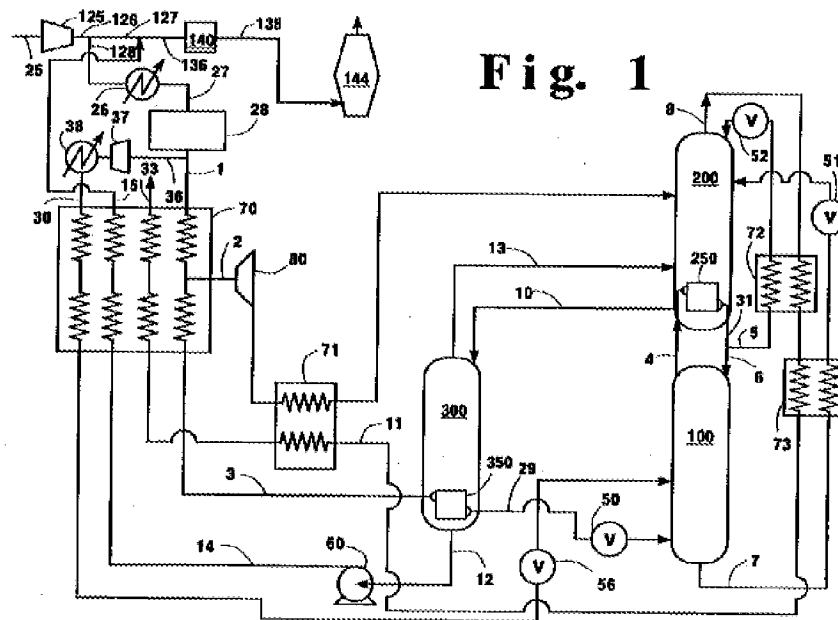
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7, 8 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drnevich et al (US 5,582,036) in view of Wang et al (US 2003/0213688 A1).

Drnevich et al teaches a cryogenic air separator blast furnace system as shown in Fig. 1:

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See also column 4. Ten to 50% of the blast furnace air is withdrawn at 128 to the air separation unit (ASU). This composition does not specifically teach the claimed range of more than 50%. A *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. See MPEP § 2144.05 I. In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. See MPEP § 2144.05. The purity of oxygen from the ASU is 70-99 mole percent (column 5, line 38), which is equivalent to volume percent based on the ideal gas law. This range overlaps the claimed range; in the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. See MPEP § 2144.05. However, Drnevich et al does not teach the controller as in Claims 7, 8 and 10-12.

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Drenvich et al teaches a second compressor at 137. Wang et al teaches controlling a distillation column in an air separation unit, including flow rate (which comes from the blower) and pressure [0006]. Regarding Claims 8 and 10-12, the controllers include PIC and FIC [0013]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the controller taught by Wang et al, since Wang teaches a more stable operation of the distillation process may be achieved, customer demands can be met, and desired purity can be obtained [0024].

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drenvich et al as applied to claim 7 above, and further in view of Drenvich (US 5,802,875).

Drenvich et al discloses the invention substantially as claimed. Though Drenvich et al teaches cooling in column 4, line 40, Drenvich et al does not teach the temperature range as claimed. Drenvich teaches a method for controlling an integrated cryogenic air separation unit/gas turbine system. In column 4, Drenvich teaches that the temperature depends upon the flow rate as shown in Table I. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the claimed temperature, since a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation; therefore a *prima facie* case of obviousness exists. See MPEP § 2144.05 II B.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Seiver et al (US 6,622,521 B2) teaches an adaptive control for air separation unit. Magnet et al (US 6,062,043) teaches a process for feeding a gas-consuming unit. Shah et al (US 6,045,602) teaches a method for increasing iron production by integrating blast furnace ironmaking with direct reduction ironmaking using cryogenic rectification. Ha et al (US 2003/0000342 A1) teaches processes and apparatuses for the integration of a blast furnace and an air separation plant to increase blast furnace production. Megan et al (US 6,697,713 B2) teaches a method of controlling a gas distribution system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMA M. MCGUTHRY-BANKS whose telephone number is (571)272-2744. The examiner can normally be reached on M-F 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy King/
Supervisory Patent Examiner, Art Unit
1793

/T. M. M./
Examiner, Art Unit 1793
3 September 2008